IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CRML LEAVE TO APPEAL No. 278 of 2006

STATE
V/S
BHAN SINGH & ORS.

Mr. HR SONI, PP, for the appellant / petitioner

Date of Order : 30.11.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned Public Prosecutor, and perused the record.

The learned court below has acquitted the accused of the offence under Section 427 and 447 I.P.C. so also of the offence under the SC/ST (Prevention of Atrocities) Act.

A perusal of the record shows that there had been revenue litigation with respect to the land in question, and therein the land was adjudicated to be belonging to Phool Chand, and thereafter the accused has purchased from this Phool Chand. As against this the complainant has come forward with a story of the land having been purchased by her father some 40 years back, and also having been granted Patta by the Gram Panchayat, and the learned trial court has found that the description of the property given in the sale deed so also in the Patta does not tally with the land

in question where the shops are said to have been demolished.

True it is that the learned trial court has gone on the title of the land, as to whether it belongs to the complainant or not, but then in the circumstances of the case, when the accused claims the land to be his, and claims the complainant to have trespassed over his land, and he is prosecuted for the offence under Section 447 and 427 I.P.C., on that count, it was all the more necessary for the learned trial court to have gone into the question of title, to a limited extent, as gone by it. Likewise, in any case, since the accused persons claimed title over the land, it cannot be said that their act at all amounted to any offence under Section 447 and 427 I.P.C.

So far the offence under the SC/ST Act are concerned, significantly in the F.I.R. There is no averment in this regard, and even in the previous statement there is no averment in this regard, and the theory has been developed during trial only where she appeared as P.W.2. She was confronted with her previous statement, by contending that she had not deposed this story in her earlier statement, and the usual explanation was given that she had given out but it was not recorded in the statement. This explanation has not been believed by the learned trial court, and in my view, also rightly so. Then, P.W.4 has

also deposed about complainant having hurled abuses in the name of her caste but then this witness had not deposed any this regard in his previous statement, and he also has same explanation. Likewise is the condition of P.W.5. Thus it clearly appears that the theory of hurling abuses in the name of caste is clearly subsequent development made with intention to magnify the offence.

Thus, I do not find any error in the findings recorded by the learned trial court. Leave to appeal thus has no force, and is dismissed summarily.

(N P GUPTA),J.

/Sushil/